

BEFORE THE
SURFACE TRANSPORTATION BOARD

WISCONSIN CENTRAL, LTD. – PETITION FOR DECLARATORY
ORDER – INTERCHANGE WITH SOO LINE RAILROAD COMPANY

300760

STB FINANCE DOCKET NO. 36397

ENTERED
Office of Proceedings
June 18, 2020
Part of
Public Record

MOTION FOR LEAVE TO FILE REPLY TO REPLY

Wisconsin Central, Ltd. (“CN”) respectfully moves for leave to submit the attached Reply to the Reply that Soo Line Railroad Company d/b/a Canadian Pacific Railway (“CP”) filed in the above-captioned proceeding on May 29, 2020 (“CP Reply”). The CP Reply features new arguments and misleading factual and legal assertions, and there is good cause for the Board to permit CN to submit the Reply to Reply to complete and correct the record under these circumstances.¹

For example, CP’s Reply misstates the significance of the Interim Agreement that CP and CN entered into on August 16, 2019, claiming that this Interim Agreement reflected a permanent solution and that CN has initiated this proceeding to “get a better deal.” CP Reply at 2. The Interim Agreement is just

¹ See, e.g., *Soo Line R.R. Co.—Pet. for Declaratory Order and Preliminary Injunction—Interchange with Canadian Nat’l*, FD 36299, slip op. at 1 n.1 (STB served July 19, 2019) (accepting letter submissions replying to replies “in the interest of a more complete record”); *National Ass’n of Reversionary Prop. Owners—Pet. for Declaratory Order*, EP 749, slip op. at 1 n.1 (STB served Aug. 13, 2018) (accepting reply to reply “in the interest of having a more complete record”); *City of Alexandria—Pet. for Declaratory Order*, FD 35157, slip op. at 2 (STB served Nov. 6, 2008) (accepting reply to reply to complete record).

that—an interim agreement that explicitly contemplates that {{

}}

CP’s claim that CN is trying to change the terms of a deal is mistaken. Indeed, it is CP that is trying to change the deal, by arguing that {{

}}

Similarly misleading are CP’s efforts to persuade the Board that CN may not designate a co-owned terminal railroad to receive its interchange traffic because “well settled” law requires carriers in “direct physical connection[s]” to designate interchange receipt points on only their “own line[s].” CP Reply at 7-9; *see id.* at 14-16. CP does not even attempt to explain how the “own line” principle it now advances is required by the language of § 10742, but instead derives this supposedly “well settled” rule entirely from dicta in cases that never considered whether a carrier could designate a co-owned terminal carrier to receive its interchange traffic.

There is good cause to allow CN to respond to new arguments and factual assertions CP has raised in its Reply that were not raised in the prior Finance Docket No. 36299 proceeding.² For example, CP’s Reply asserts that the Board is legally required to ignore the unmistakable evidence that moving the interchange

² *See City of Alexandria—Pet. for Declaratory Order*, FD 35157, slip op. at 2 (STB served Nov. 6, 2008) (finding it “appropriate” to accept reply to reply addressing new evidence).

point from Spaulding in August 2019 pursuant to the Interim Agreement dramatically reduced grade crossing delays affecting the adjacent communities. CP Reply at 20-22. CP’s claim that the Board is somehow forbidden from considering community impacts when determining whether an interchange point is reasonable was never raised in FD 36299, and CN should be allowed to address this new and extraordinary proposition. In addition, CP used its Reply to make proposals regarding discovery and a future procedural schedule. CN should be permitted to respond to each proposal.

Finally, there is plainly good cause for the Board to permit CN to respond to the arguments in CP’s Reply so that the Board has a complete record on which to issue a decision.³ In the Board’s final decision in FD 36299, it recognized the need to have the parties “fully brief[]” the question of which party is responsible for paying CP’s switching costs at Clearing.⁴ Accepting CN’s Reply to Reply will permit full briefing on these important questions.

³ See *National Ass’n of Reversionary Prop. Owners—Pet. for Declaratory Order*, EP 749, slip op. at 1, n.1 (STB served Aug. 13, 2018) (accepting reply to reply “in the interest of having a more complete record”); *City of Alexandria—Pet. for Declaratory Order*, FD 35157, slip op. at 2 (STB served Nov. 6, 2008) (finding it “appropriate” to accept reply to reply addressing new evidence)

⁴ *Soo Line Railroad Company—Pet. for Declaratory Order and Preliminary Injunction—Interchange With Canadian National*, FD 36299, slip op. at 4 (STB served Nov. 29, 2019).

For these reasons, CN respectfully requests that the Board accept its Reply to Reply.

Respectfully submitted,

/s/ Matthew J. Warren

Raymond A. Atkins
Matthew J. Warren
Morgan B. Lindsay
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
mjwarren@sidley.com

Kathryn J. Gainey
Counsel, US Regulatory Affairs
CN
601 Pennsylvania Ave., NW
Suite 500, North Building
Washington, DC 20004
Kathryn.Gainey@cn.ca

Counsel to Wisconsin Central, Ltd.

Dated: June 18, 2020

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of June 2020, I caused a copy of the foregoing Motion for Leave to File Reply to Reply to be served by email and first-class mail upon the following parties of record.

:

David F. Rifkind
Stinson Leonard Street
1775 Pennsylvania Ave, NW
Suite 800
Washington, DC 20006
David.rifkind@stinson.com

Charles W. Webster
Canadian Pacific
11306 West Franklin Ave.
Franklin Park, IL 60131
Charles_webster@cpr.ca

Kevin Wallace
Village of Bartlett
228 S. Main St.
Bartlett, IL 60103
sskrycki@vbartlett.org

/s/ Matthew J. Warren
Matthew J. Warren